CONSERVATION, DIVISION OF: Forestry—Whether deputy fire wardens are protected by Workmen’s Compensation Act.

July 22, 1936.

Mr. E. P. Wilson,
Assistant State Forester,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter in which you request an official opinion with respect to the status of forest fire wardens and the group which you have designated as “enlisted personnel” as to whether the same are employees and protected by the Indiana Workmen’s Compensation Act. I am advised that the forest fire wardens are designated as such by the Department of Conservation for the purpose of detecting fires and the organization of workers to fight forest fires and to enforce the forest fire laws. The “enlisted personnel” consists of men who have expressed willingness to be called at any time a forest fire is burning to assist in its extinguishment. Neither the “enlisted personnel” nor the fire wardens, so-called, are paid except for services rendered while they are actually fighting a fire, during which time they receive from fifteen to twenty-five cents an hour, depending upon their standings. These men are paid for their services out of the forestry fund provided in Section 32-401, Section 32-402 and Section 32-403 of Burns Indiana Statutes Annotated, 1933. It is not very clear as to just what duties the so-called forest fire wardens have in enforcing forest fire laws. If they have such authority they would probably occupy the position of officers and would not be within the protection of the Workmen’s Compensation Act. It was so held as to game wardens in the case of State vs. Natt kemper, 86 Ind. App. 85. If, however, the forest fire wardens, so-called, are employees pursuant to and in furtherance of objects set out in Section 32-402, supra, “for the organized prevention, detection, control and suppression of forest fires in the forests, woodlands, plantations and waste lands reverting to forest growth within the state,” in my opinion, they are simply employees. This would certainly be true with respect to the “enlisted personnel.”

The question then arises as to whether they are employees as that term is used in the Workmen’s Compensation Act.
Section 40-1701 of Burns Indiana Statutes Annotated 1933, in defining the term employee as used in said Act provides as follows:

"The term 'employee,' as used in this Act, shall be construed to include every person, including a minor, in the service of another, under any contract of hire or apprenticeship, written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation or profession of the employer."

Is this employment "casual and not in the usual course of the trade, business, occupation or profession of the employer?" The employment is doubtless casual but when we come to consider the question as to whether it is "in the usual course of the trade, business, occupation or profession of the employer" the question becomes more difficult, and it has been held that in order to be without the terms of the Workmen's Compensation Act the employment must not only be casual but not in the usual course of the trade, business, occupation or profession of the employer.


It is difficult to construct from the authorities an abstract statement as to when an employment is in the course of the trade or business of the employer and when it is not within the same. However, it appears to me that one of the duties of the Department of Conservation under the Act creating the State Forestry Fund is to take steps for the organized prevention, detection, control and suppression of forest fires and the employment of men to perform this service, which seems to me to be in the usual course of the business of the employer which is the Department of Conservation. I am of the opinion, therefore, that unless there is an election by the Department rejecting the Workmen's Compensation Act as to these men or an election by the men not to be bound by the Act, these elections to be made in conformity with the Act—unless there is such an election upon the part of one or the other, such persons would be entitled to the protection of the Workmen's Compensation Act for accidents arising out of and in the course of the employment.